



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

Reply form

on the Joint Consultation Paper on the review of SFDR Delegated Regulation regarding PAI and financial product disclosures



12 April 2023
ESMA34-45-1218

Responding to this paper

The ESAs invite comments on all matters in the Joint Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

ESMA will consider all comments received by **4 July 2023**.

Instructions

In order to facilitate analysis of responses to the Joint Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Joint Consultation Paper in this reply form.
- Please do not remove tags of the type <ESMA_QUESTION_SFDR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP SFDR Review_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP SFDR Review_ABCD.

- Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input - Consultations’.



Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs' rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725¹. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

¹ Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	German Banking Industry Comitee
Activity	Banking sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Germany

GBIC² fully supports the EU Action Plan on financing sustainable growth. Our associated members (Banks/Savings Banks) are committed to contributing to the goal of reorienting capital flows towards sustainable investments by developing investment strategies and issuing products that serve different sustainability preferences of clients. In this context the banks have made a considerable effort to implement the disclosure obligations under the SFDR. The market for sustainable investments is experiencing a rapid growth in Germany and the industry is actively taking part in the evolution of the regulatory frameworks to ensure that they will create an environment in which sustainable investing can thrive and grow.

Against this background, we welcome the opportunity to comment on the ESA joint consultation paper on the review of SFDR Delegated Regulation regarding PAI and financial product disclosures, even if it is questionable whether fundamental changes regarding PAI disclosures and the templates make sense at this point in time. We hope that by reviewing the material concepts of SFDR and providing new proposals in terms of investor information on PAI and the ESG templates, the results of the ESAs' work will contribute to the EU framework for sustainable finance.

Not all questions of the consultation are answered.

Questions

Q1 : Do you agree with the newly proposed mandatory social indicators in Annex I, Table I (amount of accumulated earnings in non-cooperative tax jurisdictions for

² The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.



undertakings whose turnover exceeds € 750 million, exposure to companies involved in the cultivation and production of tobacco, interference with the formation of trade unions or election worker representatives, share of employees earning less than the adequate wage)?

<ESMA_QUESTION_SFDR_1>

FMPs have already made significant efforts in recent months to create the PAI statement based on the Level II specifications according to SFDR Delegated Regulation. Before introducing new mandatory (social) indicators, the existing PAI-framework should first operate in practice and should therefore not currently be a priority.

Nevertheless, we welcome the fact that the ESAs want to establish a link with the KPIs to be reported in accordance with the Corporate Sustainability Reporting Directive (CSRD) and the draft European Sustainability Reporting Standards (ESRS). The FMPs ability to assess the proposed additional PAI indicators is largely dependent upon disclosure of the relevant KPIs by investee companies and will hopefully increase when CSRD will fully enter into force.

However, the process in terms of non-financial disclosures by companies will take some years in order to take effect. At the current stage, we cannot assess whether and to what extent it will improve the current situation in terms of corporate data. A huge data gap will anyway remain regarding investments outside the EU that represent a large proportion of the FMPs assets. It is essential to ensure that the relevant data is available, once new PAIs are introduced.

We therefore suggest aligning the date of entry into force of the revised SFDR Delegated Regulation with the full application of the substantive CSRD rules/ESRS. This would help to restore coherence of the EU sustainable finance rules.

If the introduction of new mandatory (social) PAIs is to be maintained, only those PAIs should be added for which reported data from the companies according to ESRS will be available in the future. This is not the case with regard to the new indicators „amount of accumulated earnings in non-cooperative tax jurisdictions“ and “interference with the formation of trade unions or election worker representatives”). A separate collection of PAIs that are not covered by the non-financial reporting through the FMP is completely impractical. To that extent, we ask the ESAs to refrain from adding these two indicators.

We are concerned that according to the current proposals of the EU Commission on the Level 2 measures for sustainability reporting under the CSRD, companies no longer have to disclose their ESG data comprehensively. Companies can classify the sustainability impacts to be identified with the help of mandatory PAI indicators as non-material based on their own business model, whereas FMPs must always take these into account in their investment decisions under Article 4 SFDR. This means that FMPs cannot, as expected, make comprehensive use of the ESG company data to be disclosed under the CSRD. If the materiality approach of the ESRS is not adjusted to ensure consistency with SFDR requirements, regulatory consistency should be ensured by adjusting the SFDR requirements accordingly, so they take account of a potential lack of information.

Only indicators with satisfactory data coverage should be included in the final list. |

<ESMA_QUESTION_SFDR_1>

Q2 : Would you recommend any other mandatory social indicator or adjust any of the ones proposed?

<ESMA_QUESTION_SFDR_2>

As stated above in our response to Q1, the inclusion of new mandatory social indicators should not currently be a priority: The necessary data collection poses a huge challenge especially for small and middle-sized market participants in both operational and financial terms. The previous PAI identification via ESG data vendors has shown that it is a long process until the collection of data and the mapping of the legally defined PAIs is possible. Moreover, with regard to non-financial reporting, only parts of the investment universe are covered.

Keeping the list of mandatory (social) indicators to a small set of KPIs would also be highly beneficial for the general understanding by distributors and end-investors. The concept of PAI is still new not only to most market participants and financial advisers, but especially to retail investors. Adding more new indicators will very likely overstrain investors who are anyway struggling to relate PAI entity-level disclosures, e.g., by a portfolio manager, to their individual portfolio/wealth management.]

<ESMA_QUESTION_SFDR_2>

Q3 : Do you agree with the newly proposed opt-in social indicators in Annex I, Table III (excessive use of non-guaranteed-hour employees in investee companies, excessive use of temporary contract employees in investee companies, excessive use of non-employee workers in investee companies, insufficient employment of persons with disabilities in the workforce, lack of grievance/complaints handling mechanism for stakeholders materially affected by the operations of investee companies, lack of grievance/complaints handling mechanism for consumers/ end-users of the investee companies)?

<ESMA_QUESTION_SFDR_3>

[The current list of opt-in Indicators in Annex I, Table 3 contains already a lot of social PAI. To reduce complexity and additional efforts for FMPs only social indicators that are of general importance for all assets and sectors and with satisfactory data coverage should be included in the final opt-in list.]

<ESMA_QUESTION_SFDR_3>

Q4 : Would you recommend any other social indicator or adjust any of the ones proposed?

<ESMA_QUESTION_SFDR_4>



No.

Keeping the three Tables of indicators to a small set of KPIs would be highly beneficial for the general understanding by distributors and end-investors. The concept of PAI is still new not only to most market participants and financial advisers, but especially to retail investors. Adding new indicators will very likely overstrain investors who are anyway struggling to relate entity-level disclosures, e.g., by a portfolio manager, to their individual portfolio/wealth management. |

<ESMA_QUESTION_SFDR_4>

Q5 : Do you agree with the changes proposed to the existing mandatory and opt-in social indicators in Annex I, Table I and III (i.e. replacing the UN Global Compact Principles with the UN Guiding Principles and ILO Declaration on Fundamental Principles and Rights at Work)? Do you have any additional suggestions for changes to other indicators not considered by the ESAs?

<ESMA_QUESTION_SFDR_5>

We do not agree with the proposed replacement of the UN Global Compact Principles with the UN Guiding Principles and ILO Declaration on Fundamental Principles. This would result in another adjustment of the existing implementation. Data on severe controversies/breaches of UN Global Compact (share of investments in investee companies that have been involved in severe violations of the UNGC principles) is widely available.

It should be noted that, based on regulation, numerous products have been aligned with the UN Global Compact and distributed. Replacing this indicator would lead to confusion and uncertainty among investors, which could have a negative impact on the demand for sustainable financial instruments. Furthermore, a corresponding exchange would lead to partly extensive contractual adjustments, which - since this is not possible via the General Terms and Conditions - change mode (AGB-Änderungsmodus) - would require intensive interaction with the client. Furthermore, we fear that clients would be flooded with even more data that would not bring any added value. |

<ESMA_QUESTION_SFDR_5>

Q6 : For real estate assets, do you consider relevant to apply any PAI indicator related to social matters to the entity in charge of the management of the real estate assets the FMP invested in?

<ESMA_QUESTION_SFDR_6>

If social PAI indicators would have to be applied that affect the asset manager of real estates, this would be a paradigm shift. Up to now the asset manager of real estate funds is using PAI indicators within the products (real estate funds).

It would be a huge challenge especially with regards to the control process of the PAI, since the asset manager PAIs could no longer be changed by activities in the real estate fund. Regarding the proposed inclusion of new mandatory social indicators, we have the following remarks:

- Earnings in noncooperative tax jurisdictions: This would be an indicator where the asset manager could have influence in the product design, and which could be applied to large real estate investors.
- Exposure to companies involved in the cultivation and production of tobacco: This indicator would not be relevant for real estate funds.
- Interference in the formation of trade unions or election of worker representatives: The asset manager would have no knowledge about that in the real estate sector respectively in the supply chain, nor could this data be readily obtained, as companies in the supply are not obliged to report the data (due to the size and nature of their operations and have no disclosure requirements).
- Share of employees earning less than the adequate wage: Obtaining data on this indicator would also be problematic regarding the supply chain.

The PAI calculation may also be problematic if real estate funds are mixed through joint ventures or asset managers and financial advisory mandates. It would then be unclear how the PAIs of the asset manager are to be calculated and reported.

Instead of applying the existing and/or new social PAI indicators one to one to real estate asset managing companies we would rather propose social PAI indicators that are related to real estates. This would do justice to the specifics of the products at issue. For example: Share of space rented to social or non-profit institutions or needy tenants, share of buildings that are fully inclusive (100% usable by persons with disabilities), share of socially subsidized housing. |

<ESMA_QUESTION_SFDR_6>

Q7 : For real estate assets, do you see any merit in adjusting the definition of PAI indicator 22 of Table 1 in order to align it with the EU Taxonomy criteria applicable to the DNSH of the climate change mitigation objective under the climate change adaptation objective?

<ESMA_QUESTION_SFDR_7>

|Adjusting the definition of PAI indicator 22 of Table 1 has advantages and disadvantages.

Advantages:

- Harmonizing the definition with the Taxonomy Regulation would improve the comprehensibility of the subject and simplify parallel strategies (PAI product and taxonomy proportion).
- Improving a building from D to C in order to improve the PAI quota brings more than improving a building from C to B.

Disadvantages:

- The market for A-C real estates is broader so that there would be less investment pressure for very efficient buildings (A and B buildings).
- The demand for improvement becomes lower, so we are afraid that less will be invested as well.

Furthermore, it is to be stated that Data availability is already not a given. When establishing new reporting obligations, it is essential to ensure that the data is available. |

<ESMA_QUESTION_SFDR_7>

Q8 : Do you see any challenges in the interaction between the definition ‘enterprise value’ and ‘current value of investment’ for the calculation of the PAI indicators?

<ESMA_QUESTION_SFDR_8>

| Article 6(3) of SFDR Delegated Regulation requires the calculation of impacts as the average of impacts on 31 March, 30 June, 30 September, and 31 December of each period from 1 January to 31 December.

Some PAI, like the GHG emission, are determined as the value of the impact (i.e., the emission level) multiplied by the detention percentage (current value of the investment/investee company’s enterprise value).

Whilst the SFDR Delegated Regulation provides a definition of the enterprise value at year-end, it does not include any indication as to how the detention percentage shall be determined for the periods other than year-ends. On the other hand, in the Q&A published on 17 November 2022 under the reference JC 2022 82 (the “Q&A”), the ESAs indicate that the “enterprise value is fixed at fiscal year-end, annually” (question 6) and that “the quarterly impacts should be based on the current value of the investment derived from the valuation of the individual investment (e.g., share) price valued at fiscal year-end multiplied by the quantity of investments (e.g., shares) held at the end of each quarter. In such manner the composition of the investments at the end of each quarter is taken into account, but the valuation reflects the fiscal year-end point in time” (question 7).

Whilst this approach addresses the bias induced by the variations of share prices in the context of shares, determining the detention percentage by comparing the current value of the investments at quarter-end to the enterprise value at year-end introduces many other biases linked, for instance, to:

- variation of the number of shares issued by a company (capital increase/decrease, stock split, corporate actions, etc.);
- companies liquidated before year-end;
- variation of the net debt ratio of the company during the year;
- debt investment (including bond price variation);
- derivatives.

Indeed, the regulatory issue is, how to estimate detention percentage of a given company during the year while being consistent with the impact figures published at year-end by the company.

The approach described in the Q&A consists in calculating the detention percentage from the number of securities held by investors at the end of each quarter. However, this

- does not solve the consistency issue, focuses on how to manage the impact of financial market fluctuations, does not resolve issues regarding changes in debt profile, activity perimeter of the company, credit event, etc., but introduces huge impact in case of changes in the capital structure of the company (stock split, capital increase, corporate action);
 - introduces unwelcome complexity on the calculation approaches for only a limited number of PAIs while the others can be calculated based on quarterly market valuations, increasing operational risks;
 - introduces additional workload for reporting and is contrary to common practices for portfolio analysis (presentation of asset allocations, performance and risk calculations, look-through analysis for prudential reports), which are based on market valuations.
- The fiscal year end is not necessarily available for all investments, for which data for the PAI-indicators is available. This means, that either for such an investment an arbitrary fiscal year end must be considered (which would contradict the requirement laid out by Q&A jc_2022_62_jc_sfdr_Q&A_DelVO.pdf) or that such an investment cannot be included in the calculation. The latter one is not in the interest of the EU, since it artificially reduces the coverage of PAI-indicators.
 - If an FMP invests in funds, the PAI-calculation must consider those investments as well.
 - However, even though reliable data for the PAI-indicators for funds is available, the weighting with the valuation at fiscal year-end of a fund constituents cannot be carried out since this fiscal year end is not known. This means, that unless the FMP has a full “see-through” to the constituents of a fund, the FMP must use the funds valuation for calculating the PAI-indicator.
 - Since a fiscal year end for the funds constituents is not available, an arbitrary fiscal year end of e.g., 31st December of the analyzed year must be used.
 - Since funds might make up a large proportion of a financial market participants investments, this means that a (potentially large) proportion of a financial market participants investments cannot be included in the PAI-calculation as intended by Q&A 6 of jc_2022_62_jc_sfdr_Q&A_DelVO.pdf but only by using the market valuation at an arbitrary date.
 - With the introduction of the fiscal year end valuation, however, artificial valuations are created, which can differ greatly from the average market valuation of a financial market participants investments and thus hinder understanding of the PAI-statement.

To reduce the bias in the PAI impact calculation, we recommend for transparency and consistency purposes, to adopt an approach that relies on a quarterly estimation of the enterprise value based on market prices to calculate the detention percentage.

Furthermore, it should be noted that the choice of using revenues, enterprise value or current value has a huge impact on the outcome of the PAI assessment. Growth investors might be better off with current value and value companies with enterprise value. Awareness of these choices – also for the reader of the statement - is important. “Enterprise value” and “current value of investment” should be coherent with regard to timeframe. In circumstances where the market experiences price increases or decreases, the measurement of emissions could result significantly overstated or understated, proportionally to the market movement.

Moreover, changes in the measurement methodology affect how ESG data providers will be able to adapt the calculation formulas in a timely manner. This change will also prevent the comparability between indicators between PAI reports in N and N-1. |

<ESMA_QUESTION_SFDR_8>

Q9 : Do you have any comments or proposed adjustments to the new formulae suggested in Annex I?

<ESMA_QUESTION_SFDR_9>

| We support that the ESAs already adjusted some formulae in Annex I of SFDR Delegated Regulation, especially the formulae for calculating the current PAI Indicators 3 and 15 (GHG intensity of investee companies and GHG intensity of investee countries).

The introduction of formulae for each PAI-indicator is very much appreciated since it could help to prevent misunderstandings.

For a few formulae, however, we would like to propose some amendments:

- In formula 7 for ‘energy consumption intensity per high impact climate sector’ it is proposed that a company’s energy consumption intensity shall be weighted by the company’s revenue that falls into the NACE-sector [A-H, L]. However, this data is not readily available. Companies are attributed to a specific NACE-sector as a whole. Thus, the introduction of this requirement would imply further complications to an already very complicated calculation. We would propose to account for the NACE-sectors in the definition of ‘all investments’ (see also our response to question 12). This way an artificial reduction of PAI 6 is avoided without introducing further burdens on FMPs.
- Formula 21 for ‘investee countries subject to social violations’ is defined to be interpreted as a percentage value, same as with other “share of investments...” formulae. However, the new PAI-indicator 20 “Investee countries subject to social violations” is defined as “Number of investee countries subject to social violations,...” which contradicts formula 21. The formula for the PAI-indicator and the PAI-indicators description should be aligned.
- Formular 13 for ‘gender pay gap’: The definition of the calculation of the gender pay gap is a maximization formula. However, since the payment for male and female employees of an investment company is taken as a whole (lower script i for the payments of male and female employees), the maximization does not appear necessary.

In any case new formulae should not increase the complexity of calculating PAI indicators. |

<ESMA_QUESTION_SFDR_9>

Q10 : Do you have any comments on the further clarifications or technical changes to the current list of indicators? Did you encounter any issues in the calculation of the adverse impact for any of the other existing indicators in Annex I?

<ESMA_QUESTION_SFDR_10>

We would like to point out that there were numerous challenges when generating the first PAI-aggregation, most notably the following:

- The introduction of the counter-intuitive connection of an investment's valuation at its fiscal year end with Q&A jc_2022_62_jc_sfdr_Q&A_DeIVO.pdf implied large efforts to change the calculation. It would be appreciated, if the RTS would be amended, as it is proposed with this consultation (see Q8).
- The calculation of the "Carbon footprint" is contrary to the common calculation of the carbon footprint in the market. In the current formula for the carbon footprint it is required, that 'all investments' are considered as 'million Euros'. This implies, that the denominator of the formula becomes artificially small compared to the nominator (where the current value of investment in company i is considered) and thus means an artificially high carbon footprint. We appreciate that this has been corrected with formula 2 in this consultation.

Some of the PAI-indicators (such as PAI 8, 9, 12 and 13 of the current RTS) have a very small coverage of ESG-data. We therefore welcome that the proposed new PAI-indicators are based on the ESRS. But this will only reduce the problem for future calculations, if the data will definitely be reported by the investee companies (see also our answer to Q1).

<ESMA_QUESTION_SFDR_10>

Q11 : Do you agree with the proposal to require the disclosure of the share of information for the PAI indicators for which the financial market participant relies on information directly from investee companies?

<ESMA_QUESTION_SFDR_11>

Practice has shown that FMPs barely obtain data directly from the investee companies. For portfolio management purposes, it is barely possible to obtain the data directly from the investee companies. Small and middle-sized FMPs rely on ESG data vendors, as they do not have the capacity to approach the investing companies directly. To facilitate a reliable and valid PAI calculation, FMPs must rely on ESG-data by ESG-data vendors, which is processed automatically with a software solution. It is just not possible to carry out the complex PAI-aggregation manually for all investments of an FMP. Even if data were manually gathered, integrating such data in a sophisticated PAI-aggregation is particularly unrealistic. It would require having separate data sources for potentially the same investment.



Furthermore, such manual data collection and integration in the PAI-aggregation poses a very high risk for human error and thus reduces the PAI-statements validity.

Apart from that the proposed disclosure would not be helpful. We doubt the added value of disclosing information on the PAI indicators for which the FMP relies on information directly from investee companies in a statement without further explanations for the end investors. Disclosing “100% data gathered from ESG-data supplier” does not seem to be a beneficial information either. Any clarifications in terms of information for the PAI indicators for which the FMP relies on information directly from investee companies will very likely not be considered unless investors are familiar with the general concept. In our opinion, this does not add much value either. A general reference to estimates is sufficient. |

<ESMA_QUESTION_SFDR_11>

Q12 : What is your view on the approach taken in this consultation paper to define ‘all investments’? What are the advantages and drawbacks you identify? Would a change in the approach adopted for the treatment of ‘all investments’ be necessary in your view?

<ESMA_QUESTION_SFDR_12>

| We agree with the ESAs, that both the comparability of PAI-statements as well as avoidance of greenwashing are very important. PAI-indicators can get artificially low if investments are used for weighing the PAI-indicator they do not apply to..

Therefore, the new approach can lead to more clarity.

According to the new proposal, “all Investments” could be defined as investments in the particular type of investment (i.e., investee companies, sovereigns and supnationals, or real estate assets) be understood as causing the adverse impact. Information on PAI then relates only to the individual investment values of the investment type relevant for the respective PAI. Focusing PAI calculations on relevant risk categories would have the advantage of focusing each indicator on the asset types for which it is relevant.

However, we would propose to only include investments for which data for a specific PAI-indicator is available at all (in order to align it with the respective European legislation on reporting/CSRD).

Apart from that, it is questionable which effects those changes would have for the PAI-Statement and the section “historical comparison” (Annex I, Table 1). The results of the comparison would not be meaningful since they would be based on different PAI calculation methods. We would be grateful if the ESAs could clarify this aspect in the Final Report. |

<ESMA_QUESTION_SFDR_12>

Q13 : Do you agree with the ESAs' proposal to only require the inclusion of information on investee companies' value chains in the PAI calculations where the investee company reports them? If not, what would you propose as an alternative?

<ESMA_QUESTION_SFDR_13>

We understand the ESAs would like to align the value chain consideration in the SFDR with the ESRs and the CSRD. Therefore, FMPs should include information about the value chains of investee companies and the negative effects of the value chain must be considered in the PAI calculation.

Only if the investee company reports in accordance with the CSRD and the data disclosed is publicly available, FMPs should be required to include information on investee companies' value chains in the PAI calculations, although significance behind this disclosure is questionable.

If the investee companies do not report in accordance with the CSRD or another standard of sustainability reporting, e.g. GRI, the FMPs shall not be obliged to procure the information about their value chain by other means, e.g. via third-party providers. |

<ESMA_QUESTION_SFDR_13>

Q14 : Do you agree with the proposed treatment of derivatives in the PAI indicators or would you suggest any other method?

<ESMA_QUESTION_SFDR_14>

ESAs' approach is reasonable and comprehensible: If it is demonstrated that there is no physical delivery, the FMP may assume that this derivative investment has no adverse effects and should therefore be allowed to exclude it from the numerator.

1. Role of derivatives in the economy

We welcome that the Consultation Paper reiterates the role of derivatives in the sustainable economy and aims to clarify the methodologies to take them into account in investors' ESG disclosures. It should be clear that a PAI for derivatives transactions is only relevant when it can be seen as an investment decision of the FMP. In most cases derivatives are offered for hedging purposes (e.g. hedging interest rate risks on loans of borrowers) or giving opportunity for extra return of an already existing investment portfolio (e.g. writing call options on shares in the portfolio of the client). In these cases there are no investments in economic activities and no investment decision as meant for the PAI according to Article 4(1a) SFDR.

2. Regarding the PAI proposals

a) Delta



We welcome the consideration of derivatives as an investment decision measured according to their equivalent position in the underlying asset, also called Delta. We recommend a consistent metric across the three ratios (PAI, Taxonomy and SI).

b) Long/short netting

We welcome the inclusion of long and short derivatives positions. In order to embrace the full economic exposure on a given issuer, both the amount of risk carried out by long and short positions must be reflected for their full value. We welcome the ESAs reiterating this economic reality that long and short should be netted at the level of an individual counterpart.

Given PAI is an indicator which negative impacts, the proposed approach to floor this indicator to zero by issuer and by PAI category seems reasonable to us.

c) Physical investment

Regarding the option for FMPs to disregard derivatives if they cannot show that they result in a physical investment in the underlying asset, we would disagree with this criterion. As per above the ownership of a physical asset is not a criterion to evidence impacts. Therefore, the inclusion or exclusion of this criterion is irrelevant to capture investor's impacts when using derivatives. |

<ESMA_QUESTION_SFDR_14>

Q15 : What are your views with regard to the treatment of derivatives in general (Taxonomy-alignment, share of sustainable investments and PAI calculations)? Should the netting provision of Article 17(1)(g) be applied to sustainable investment calculations?

<ESMA_QUESTION_SFDR_15>

| 1. Consistency across KPIs

It has previously been recognised that the inconsistent treatment of derivatives within the SFDR was highly confusing and would have detrimental consequences on the EU derivatives market:

- Investors will likely reduce their derivatives activities to favour cash investments for the sake of achieving better Taxonomy or SI disclosures.
- As per above, it ignores the role of derivatives to foster investments by providing companies with a reduction in their cost of capital and market risk tailored to their risk appetite and profile, and/or by opening them access to wider markets and investment opportunities.
- It ignores the role that derivatives play for retail investors helping them participating in the equity market via capital protected products. Retail appetite for sustainable products could probably reduce as a consequence.



We therefore urge the ESAs to revise their proposals regarding Taxonomy and taking both long and short derivative positions into account to compute the Taxonomy and SI calculations. The amount of risk carried both by the long and short world is too significant to be dismissed.

2. Methodology / netting

We agree with the reference to the Short Selling regulation in the sense that both long and short derivative positions should be netted for their full algebraic value at issuer level. As explained above, all impacts must be captured to compute a meaningful green intensity of any capital allocation. Within the current framework and spirit of SFDR and Taxonomy regulations, we would agree to floor the algebraic sum to zero.

We do not agree with the cross-reference to the underlyers of “share capital and sovereign debt” in the Short Selling regulation as the scope of underlyers authorised to be captured and netted.

Companies are real actors of the economy able to influence the re-allocation of capital flows towards the green sectors, Taxonomy aligned activities and the transition. As noted above, by sharing companies’ business risk, investors contribute to define companies’ cost of capital. Derivatives (long and short) whose underlyings are companies’ equity and corporate debt are the obvious ones that can create an impact and are assessable against the EU Taxonomy and sustainability objectives/ESG characteristics, proportionately to the exposure they offer to their underlyings (also called “delta” as per above in response to Q14).

3. Timeline/implementation

With regards to the timeline of the operationalization and implementation of the new reporting rules, we would suggest a phase-in approach. |

<ESMA_QUESTION_SFDR_15>

Q16 : Do you see the need to extend the scope of the provisions of point g of paragraph 1 of Article 17 of the SFDR Delegated Regulation to asset classes other than equity and sovereign exposures?

<ESMA_QUESTION_SFDR_16>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_16>

Q17 : Do you agree with the ESAs’ assessment of the DNSH framework under SFDR?

<ESMA_QUESTION_SFDR_17>



| We agree with the respective assessment of the ESAs laid down in the consultation paper. |

<ESMA_QUESTION_SFDR_17>

Q18 : With regard to the DNSH disclosures in the SFDR Delegated Regulation, do you consider it relevant to make disclosures about the quantitative thresholds FMPs use to take into account the PAI indicators for DNSH purposes mandatory? Please explain your reasoning.

<ESMA_QUESTION_SFDR_18>

| In order to increase the degree of comparability it is a reasonable approach that FMPs disclose the respective quantitative thresholds they use to take into account the PAI indicators for DNSH for those indicators, where thresholds are suitable or meaningful. But only realistic thresholds can be useful to prevent greenwashing. On the other hand, the current SFDR framework leaves flexibility for potential other ways of “taking into account”. It should also be possible to use qualitative assessments to determine DNSH on PAI indicators, especially when thresholds are not suitable to assess the significance of an adverse impact. For example, the metric for the biodiversity PAI indicator measures whether a company has harmful activities in biodiversity-sensitive areas, but harmful does not have to be significantly harmful. This requires assessing the extent of the harm, for example based on environmental impact assessment reports. |

<ESMA_QUESTION_SFDR_18>

Q19 : Do you support the introduction of an optional “safe harbour” for environmental DNSH for taxonomy-aligned activities? Please explain your reasoning.

<ESMA_QUESTION_SFDR_19>

| TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_19>

Q20 : Do you agree with the longer term view of the ESAs that if two parallel concepts of sustainability are retained that the Taxonomy TSCs should form the basis of DNSH assessments? Please explain your reasoning.

<ESMA_QUESTION_SFDR_20>

| It is indispensable to adjust the inconsistencies between the two parallel concepts of sustainability in SFDR and Taxonomy Regulation. A future synchronization makes sense, but with adequate time ahead



to be able to implement IT adjustments. However, this must not lead to an even greater flood of information. |

<ESMA_QUESTION_SFDR_20>

Q21 : Are there other options for the SFDR Delegated Regulation DNSH disclosures to reduce the risk of greenwashing and increase comparability?

<ESMA_QUESTION_SFDR_21>

|It should also be possible to align the DNSH-test for sustainable investments with the respective binding elements of the investment strategy when consideration PAIs (use of the same PAI indicators for DNSH and the PAI strategy). |

<ESMA_QUESTION_SFDR_21>

Q22 : Do you agree that the proposed disclosures strike the right balance between the need for clear, reliable, decision-useful information for investors and the need to keep requirements feasible and proportional for FMPs? Please explain your answers.

<ESMA_QUESTION_SFDR_22>

|We think that the new proposals for disclosures of GHG emission reduction targets in the ESG templates are too extensive and detailed. They could impede the goal of clear and succinct information of investors. |

<ESMA_QUESTION_SFDR_22>

Q23 : Do you agree with the proposed approach of providing a hyperlink to the benchmark disclosures for products having GHG emissions reduction as their investment objective under Article 9(3) SFDR or would you prefer specific disclosures for such financial products? Do you believe the introduction of GHG emissions reduction target disclosures could lead to confusion between Article 9(3) and other Article 9 and 8 financial products? Please explain your answer.

<ESMA_QUESTION_SFDR_23>

|We are of the opinion that one (hyper-)link is enough. Otherwise, investors might be overwhelmed by the information overload. |

<ESMA_QUESTION_SFDR_23>

Q24 : The ESAs have introduced a distinction between a product-level commitment to achieve a reduction in financed emissions (through a strategy that possibly relies only on divestments and reallocations) and a commitment to achieve a reduction in investees' emissions (through investment in companies that has adopted and duly executes a convincing transition plan or through active ownership). Do you find this distinction useful for investors and actionable for FMPs? Please explain your answer.

<ESMA_QUESTION_SFDR_24>

|The introduced distinction is meaningful and useful to also show transformation possibilities. |

<ESMA_QUESTION_SFDR_24>

Q25 : Do you find it useful to have a disclosure on the degree of Paris-Alignment of the Article 9 product's target(s)? Do you think that existing methodologies can provide sufficiently robust assessments of that aspect? If yes, please specify which methodology (or methodologies) would be relevant for that purpose and what are their most critical features? Please explain your answer.

<ESMA_QUESTION_SFDR_25>

|Having a disclosure on the degree of Paris Alignment of the Article 9 product's target(s) may - in principle – be useful and may prevent greenwashing. But the added value of this information for the average investor is questionable and the implementation is again associated with a great deal of technical effort. |

<ESMA_QUESTION_SFDR_25>

Q26 : Do you agree with the proposed approach to require that the target is calculated for all investments of the financial product? Please explain your answer.

<ESMA_QUESTION_SFDR_26>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_26>

Q27 : Do you agree with the proposed approach to require that, at product level, Financed GHG emissions reduction targets be set and disclosed based on the GHG accounting and reporting standard to be referenced in the forthcoming Delegated Act (DA) of the CSRD? Should the Global GHG Accounting and Reporting Standard for the Financial Industry developed by PCAF be required as the only standard to be used for the disclosures, or should any other standard be considered? Please justify your answer and provide the name of alternative standards you would suggest, if any.

<ESMA_QUESTION_SFDR_27>

Yes, EFRAG has built on these pre-existing standardization efforts for the development of its draft ESRS. Under the draft ESRS E1, which covers climate-related disclosure requirements, financial institutions are required to consider the use of the PCAF's Standard for their financed emissions. Requiring the use of the PCAF's Standard for the measure of financial product-level baseline financed GHG emissions, when setting and disclosing targets, would support consistency in the way targets are set and progress is measured. PCAF's Standard covers all seven GHG included in national inventories under the United Nations Framework Convention for Climate Change (UNFCCC). In line with the GHG Protocol, PCAF's Standard requires the inclusion of investee companies' scope 1 and scope 2 emissions and is set to require the inclusion of scope 3 emissions for all sectors over time (following a phased-in approach).

<ESMA_QUESTION_SFDR_27>

Q28 : Do you agree with the approach taken to removals and the use of carbon credits and the alignment the ESAs have sought to achieve with the EFRAG Draft ESRS E1? Please explain your answer.

<ESMA_QUESTION_SFDR_28>

GBIC believes that consistency with the forthcoming Delegated Regulation of the CSRD would be beneficial regarding GHG removals and storage, and the use of carbon credits. Based on the latest EFRAG drafts companies would be required to report separately on their gross GHG emissions, on GHG removals and on their use of carbon credits.

<ESMA_QUESTION_SFDR_28>

Q29 : Do you find it useful to ask for disclosures regarding the consistency between the product targets and the financial market participants entity-level targets and transition plan for climate change mitigation? What could be the benefits of and challenges to making such disclosures available? Please explain your answer.



<ESMA_QUESTION_SFDR_29>

For the investor, product-related disclosure adds the most value; at entity level, the information value is regularly rather low for the investor.

In addition, we are concerned that too strict requirements for ex-ante quantitative targets might deter FMPs from offering products aiming at reducing GHG emissions for reasons of potential legal liability or greenwashing claims.

<ESMA_QUESTION_SFDR_29>

Q30 : What are your views on the inclusion of a dashboard at the top of Annexes II-V of the SFDR Delegated Regulation as summary of the key information to complement the more detailed information in the pre-contractual and periodic disclosures? Does it serve the purpose of helping consumers and less experienced retail investors understand the essential information in a simpler and more visual way?

<ESMA_QUESTION_SFDR_30>

A dashboard is supposed to show at a glance all key ESG characteristics of Article 8 and Article 9 products. In this regard we are in favor of adjustments to the existing dashboard.

However, these changes are always associated with a certain implementation effort (both technically and in processes) which should be proportional to the added value that comes with the adjustments for the client. Additionally, clients and advisors have just gotten used to the existing dashboard. This further highlights that changes to the current dashboard need to be justified by significant benefits in terms of usability.

The information in the dashboard should clearly encompass all ESG product features that are relevant in terms of sustainability preferences of investors at the point of sale according to Article 2 No. 7 MiFID II Delegated Regulation. Therefore, we welcome adding an indication in terms of PAI consideration at the product level.

From an investor point of view, we would prefer a “tick the box” indication in the dashboard – rather than using icons in grey or green indicating the “sustainability” of a financial product. Apart from that, the proposed (dual) coloring would add another layer of complexity for implementation.

We see no added value in the field with 250-character limit, for instance for Article 8 SFDR products, to [include the environmental and/or social characteristic(s) promoted by the product and the [X]% of the product's investments that promote those characteristics – 250 character limit with spaces], whereas the 1st section of the template below (without any limit) is answering such question (more clearly): “What are the environmental and/or social characteristics of this product”. To avoid redundancy and duplications it should be sufficient to indicate in the dashboard, that the product promotes environmental and/or social characteristics and to indicate the minimum proportion of sustainable investments.



For products indicating that they consider PAI, further information should be provided in the Annex. The relevant section should be renamed in “Does this product consider principal adverse impacts on sustainability factors? |

<ESMA_QUESTION_SFDR_30>

Q31 : Do you agree that the current version of the templates capture all the information needed for retail investors to understand the characteristics of the products? Do you have views on how to further simplify the language in the dashboard, or other sections of the templates, to make it more understandable to retail investors?

<ESMA_QUESTION_SFDR_31>

|We believe that the templates are highly useful to standardize the publication of sustainability information for each financial product and this greatly simplifies the comparison exercise. However, we think that, in their current state, the templates are still beyond the analytical capabilities of most retail investors. We understand that the ESAs intend to simplify the language in the templates. In some cases questions were rephrased (e.g. currently “What are the binding elements of this investment strategy used to select the investments to attain each of the environmental or social characteristics promoted by the financial product?” – new wording “What commitments are made in the investment strategy regarding the environmental or social characteristics of the product?”). However, it is not quite clear whether this should just enhance comprehensibility for retail investors, or whether the content of these questions – and therefore the answers as well – should be changed. This needs to be clarified. |

<ESMA_QUESTION_SFDR_31>

Q32 : Do you have any suggestion on how to further simplify or enhance the legibility of the current templates?

<ESMA_QUESTION_SFDR_32>

|Information on ESG-related elements of the investment strategy should be streamlined. As it stands, the templates include several questions for describing ESG-related elements of the investment strategy that neither are clearly delineated nor follow a logical sequence. This leads to either duplicative or discerped information and is in either case detrimental to investors’ understanding. Especially the questions “What sustainability indicators are used...” and “What are the binding elements of the investment strategy...” included in both templates (in Annex II and III) tend to be answered in a very similar manner, since any relevant sustainability indicators must be directly linked to the binding elements of the investment strategy. Also, for products considering PAIs as a binding element, there is currently an artificial distinction between PAI consideration and other investment criteria that also hampers comprehensibility for investors.



The following suggestions to simplify and clarify the templates for retail clients may be considered:

1. Reorganization of the structure of the templates to put together pieces of information that cover the same concepts but were previously split.
2. Simplification of the ratios in the precontractual templates – in particular, the proportions with commitments should be aligned with the ESG preferences (i.e., sustainable investments and EU Taxonomy).
3. Conduction of extensive client-testing in all markets, to ensure that the proposals improve clients' understanding and match their information needs. The client-testing should replicate a real-life situation where clients are confronted with the entire document, and not just with parts of the document. |

<ESMA_QUESTION_SFDR_32>

Q33 : Is the investment tree in the asset allocation section necessary if the dashboard shows the proportion of sustainable and taxonomy-aligned investments?

<ESMA_QUESTION_SFDR_33>

| FMPs have made a considerable effort to implement the investment tree. While it provides a reasonably good representation of the decision-making-process, the value it adds should be reassessed in light of the proposed changes to the dashboard. In any way it would benefit from further clarification.

Some financial advisors experience the investment tree as advantageous, as it reflects their consultation process. In these cases, the dashboard might be less intuitive. However, this advantage should be examined to determine whether it continues to provide sufficient benefit to justify the update effort in light of the proposed changes to the dashboard. On the other hand, the term 'asset allocation' is generally understood as the balance between different asset types (shares, bonds, real estate, liquidity etc.). Using the term 'asset allocation' has caused confusions among investors. A reversion would therefore be deemed beneficial for clients.

Since the templates are intended for use by retail investors, it is – in any case - highly advisable to limit the information that they need to digest and not to overestimate their willingness and ability to perform due diligence on the extra-financial characteristics. |

<ESMA_QUESTION_SFDR_33>

Q34 : Do you agree with this approach of ensuring consistency in the use of colours in Annex II to V in the templates?



<ESMA_QUESTION_SFDR_34>

First of all, we doubt that the requirement to use certain colours is helpful. The presentation of green and grey icons could lead to a presentation that does not do justice to the degree of sustainability of the products. For example: Should the achievement of a sustainable investment or a taxonomy ratio of greater than zero lead to a green icon being displayed? Also, with regard to the consideration of PAIs, such a differentiation into grey and green is not opportune. Moreover, the wording regarding PAIs does not indicate that the product may not take into account all mandatory PAIs in the investment strategy. Retail clients may print out the pre-contractual information, and the colour will not come into play in a black-and-white printout.

If the approach of ensuring consistency in the use of colours in Annex II to V is to be implemented or maintained, from a practical point of view there should be more guidance, e.g., a certain colour code should be provided for the prescribed icons.

We also strongly advocate for the publication of editable templates in Word format for all EU languages. Such editable templates should include the standardized icons as prescribed in the EU Annexes for copyright-free use by FMPs. In addition, the standardized icons should be provided separately in high resolution for the use in other layout/typesetting programmes. |

<ESMA_QUESTION_SFDR_34>

Q35 : Do you agree with the approach to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically?

<ESMA_QUESTION_SFDR_35>

This proposal (“to allow to display the pre-contractual and periodic disclosures in an extendable manner electronically”) should only be an option, but not an obligation. Contractual documents – including the Annexes – are often prepared in a consolidated form. |

<ESMA_QUESTION_SFDR_35>

Q36 : Do you have any feedback with regard to the potential criteria for estimates?

<ESMA_QUESTION_SFDR_36>

While basic criteria seem comprehensible to ensure a certain standard with estimates, there shouldn't be too extensive obligations for FMPs or “examinations” with regards to the sources of the estimates. Most FMPs use information provided by a third party/ESG data vendor and rely on that information. FMPs should not be obliged in such cases to ensure that this information is the investee company's reporting. Alternatively, the ESG data vendor should be obligated to make this transparent.



In assessing DNSH and minimum safeguards, the proposal focuses on forward-looking policies of investee companies. It also states that “FMPs should not consider negative or controversial media reaction with regard to compliance with Minimum Safeguards.” However, companies do not necessarily act in the way they commit, therefore using controversies in media could be helpful to assess and monitor companies’ actions and consequences. Therefore, both company policies and media reports should be used in the process. |

<ESMA_QUESTION_SFDR_36>

Q37 : Do you perceive the need for a more specific definition of the concept of “key environmental metrics” to prevent greenwashing? If so, how could those metrics be defined?

<ESMA_QUESTION_SFDR_37>

|No. |

<ESMA_QUESTION_SFDR_37>

Q38 : Do you see the need to set out specific rules on the calculation of the proportion of sustainable investments of financial products? Please elaborate.

<ESMA_QUESTION_SFDR_38>

|We welcome that the ESAs ask the question on a uniform calculation method for sustainable investments at European level.

How the proportions in "(environmentally) sustainable investments" should be calculated in a financial product is currently not regulated. However, already today proportions of such investments, also in the sense of minimum commitments, have to be published and are part of the query of sustainability preferences according to MiFID II/IDD. Only a common understanding in the calculation of such proportions will ensure comparability of financial products.

There are different types of calculation approaches:

- "Activity based": only the revenues (or opex or capex) of a company from sustainable activities are calculated as sustainable investments (analogous to EU taxonomy).
- "Pass-fail activity based": 100% of an investment is calculated as "sustainable investment", if only a certain threshold of the turnover is derived from sustainable activities or is linked to sustainability targets (in the second variant, there are considerable differences depending on where the relevant threshold is set, usually between 20% and 50%).
- "Entity based": 100% of an investment are calculated as sustainable investment, if the investment object as a whole has concrete, measurable sustainability goals that are



underpinned by an implementation strategy (e.g. SDGs/SDG sub-targets), in particular if an entity pursues a certified climate target.

The calculation of sustainable investments should be aligned with that of Taxonomy aligned investments in order to strengthen comparability of financial products. |

<ESMA_QUESTION_SFDR_38>

Q39 : Do you agree that cross-referencing in periodic disclosures of financial products with investment options would be beneficial to address information overload?

<ESMA_QUESTION_SFDR_39>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_39>

Q40 : Do you agree with the proposed website disclosures for financial products with investment options?

<ESMA_QUESTION_SFDR_40>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_40>

Q41 : What are your views on the proposal to require that any investment option with sustainability-related features that qualifies the financial product with investment options as a financial product that promotes environmental and/or social characteristics or as a financial product that has sustainable investment as its objective, should disclose the financial product templates, with the exception of those investment options that are financial instruments according to Annex I of Directive 2014/65/EU and are not units in collective investment undertakings? Should those investment options be covered in some other way?

<ESMA_QUESTION_SFDR_41>

|TYPE YOUR TEXT HERE |

<ESMA_QUESTION_SFDR_41>

Q42 : What are the criteria the ESAs should consider when defining which information should be disclosed in a machine-readable format? Do you have any views at this stage as to which machine-readable format should be used? What challenges do you anticipate preparing and/or consuming such information in a machine-readable format?

<ESMA_QUESTION_SFDR_42>

We advocate, that in the development of the technical implementation standards, care must be taken to ensure that the additional efforts for FMPs are as low as possible. Furthermore, the application of technical standards should be aligned with the timeline of the ESAP regulation. |

<ESMA_QUESTION_SFDR_42>

Q43 : Do you have any views on the preliminary impact assessments? Can you provide estimates of costs associated with each of the policy options?

<ESMA_QUESTION_SFDR_43>

To avoid legal uncertainties the planned SFDR evaluation at Level 1 should necessarily be aligned and coordinated with the current review of the SFDR RTS. A situation where FMPs have to implement changes according to the RTS based on this Consultation, although more fundamental changes at Level 1 – and subsequently Level 2 – are forthcoming shortly afterwards, must definitely be avoided.

When amending the RTS, it would be desirable to think about easing the burden on FMPs. Portfolio management is classified as an investment service under MiFID II and as a financial product under the SFDR. Pre-contractual information and regular reportings have to be provided to individual clients for each individual portfolio management service. Hundreds and more contractual documents and regular reportings have to be prepared. Again, this results in huge IT costs and burdens that FMPs have already incurred. Changing the templates in the way proposed would not only negate this effort, but even generate such an effort. We therefore ask the ESAs to refrain from double changing the templates again within a short period.

The first PAI statement under the RTS was to be published by the end of June 2023. The considerable changes to the RTS would again result in very high cost for disclosures on FMPs, while the benefit for retail investors is largely contested. It is questionable if retail investors need information about over 20 mandatory PAIs to make their investment decisions. |

<ESMA_QUESTION_SFDR_43>